

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE KRIEGMAN, solely in his capacity
as court appointed Chapter 11 trustee for
LLS America, LLC,

Plaintiff,

v.

RONALD PONTON, JR. and TOMIKA
PONTON,

Defendants.

Case No. C22-307RSM

ORDER GRANTING MOTION TO
DISMISS GARNISHMENT
PROCEEDING, VACATE ORDER
FREEZING ACCOUNTS, AND
WITHDRAW CERTIFICATION TO
STATE SUPREME COURT

I. INTRODUCTION

This matter comes before the Court on Plaintiff Bruce Kriegman (“Trustee”)’s Motion to (1) dismiss with prejudice the garnishment proceeding under Rule 41(a)(2), (2) vacate this Court’s Order Freezing Accounts, and (3) withdraw the Order Certifying Issues to the Washington Supreme Court. Dkt. #48. Defendants Ronald Ponton and Tomika Ponton have filed a brief responding to the Motion. Dkt. #51. The Court has reviewed and finds that oral argument is not

1 necessary. For the reasons stated below, the Court GRANTS Plaintiff's Motion, vacates the Order
2 Freezing Accounts, and withdraws its Order Certifying Issues to the Washington Supreme Court.

3 II. BACKGROUND

4 In 2015, a judgment was entered against Defendants—who reside in Alabama—in the
5 Eastern District of Washington for \$117,411. *See* Dkt. #13-7. Plaintiff registered the judgment in
6 King County, Washington in 2022. *See* Dkt. #1-1. Plaintiff Bruce Kriegman, Chapter 11 trustee,
7 filed an application for a writ of garnishment with the Superior Court in King County naming JP
8 Morgan Chase Bank ("Chase") as the garnishee. *See* Dkt. #1-2. Defendants removed the action
9 to this Court. *See* Dkt. #1. On March 25, 2022, at the request of the parties, the Court issued an
10 Order Freezing Accounts of Defendants. *See* Dkt. #17. Defendants challenged jurisdiction
11 arguing that since they are Alabama residents and the situs of their bank deposits is Alabama, the
12 bank deposits can not be garnished from the state of Washington. *See* Dkt. #18. The Court denied
13 Defendants' motion to quash writ, finding the exercise of in rem jurisdiction did not violate due
14 process. *See* Dkt. #28 (reasoning that "the garnishee undeniably has contacts with this forum and
15 holds accounts with Defendants' funds"). Subsequently, at the request of Defendants, the Court
16 certified an issue to the Washington Supreme Court to determine whether the writ of garnishment
17 attaches to Defendants' bank account in Washington. *See* Dkt. #44.

21 III. DISCUSSION

22 A. Legal Standard under Rule 41(a)(2)

23 Federal Rule of Civil Procedure 41(a) governs the voluntary dismissal of an action in federal
24 court. Rule 41(a)(2) provides that unless a plaintiff files a notice of dismissal before the opposing
25 party serves either an answer or a motion for summary judgment, or the parties stipulate to the
26 dismissal of the action, "[a]n action may be dismissed at the plaintiff's request only by court order,
27
28

1 on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). A motion for voluntary
2 dismissal pursuant to Rule 41(a)(2) should be granted unless a defendant can show that it will
3 suffer some plain legal prejudice as a result of the dismissal. *Smith v. Lenches*, 263 F.3d 972, 975
4 (9th Cir. 2001); *Stevedoring Services of America v. Armilla Intern. B.V.*, 889 F.2d 919, 921 (9th
5 Cir. 1989) (stating that the purpose of Rule 41(a)(2) is “to permit a plaintiff to dismiss an action
6 without prejudice so long as the defendant will not be prejudiced ... or unfairly affected by
7 dismissal”). Legal prejudice “means prejudice to some legal interest, some legal claim, some legal
8 argument.” *Smith*, 263 F.3d at 976 (quoting *Westlands Water Dist. v. United States*, 100 F.3d 94,
9 96 (9th Cir.1996)). A dismissal does not legally prejudice a defendant because it leaves a dispute
10 unresolved or because of the uncertainty caused by the threat of future litigation. *Id.* Nor is a
11 defendant prejudiced by having to defend in state court or because of the expense incurred in
12 defending against a lawsuit. *Id.*; *Westlands*, 100 F.3d at 97. However, the decision to grant or
13 deny a motion pursuant to Rule 41(a)(2) is within the sound discretion of the trial court and may
14 be reviewed only for abuse of that discretion. *Sams v. Beech Aircraft Corp.*, 625 F.2d 273, 277
15 (9th Cir. 1980).

19 **B. Dismissal with Prejudice**

20 Plaintiff seeks to dismiss its garnishment against Defendants with prejudice, asserting that
21 continuing to pursue the funds is not a prudent business decision. *See* Dkt. #48 at 4. Defendants
22 oppose the motion, stating that a motion to dismiss with prejudice is similar to one without
23 prejudice when a foreign judgment is involved. *See* Dkt. #51 at 1. They opine that Plaintiff is
24 forum shopping and dismissal would allow Plaintiff to start a new case in another Washington
25 county at a later date. *Id.* However, they cite no legal authority for their assertions.
26
27
28

1 As stated by Plaintiff, “[f]ollowing the dismissal of this garnishment case with prejudice,
2 it would be legally impermissible for the Trustee to initiate an identical garnishment proceeding
3 in any other county.” *See* Dkt. #52 at 4 (citing *Mann v. HEW, Health Care Financing Agency*,
4 769 F.2d 590,593 (9th Cir.1985), which held “[t]here can be little doubt that a dismissal with
5 prejudice bars any further action between the parties on the issues subtended by the case”).
6 Additionally, Plaintiff certifies that he is not forum shopping and “will not apply for another writ
7 of garnishment ... in King County Superior Court or in the superior court for any other county in
8 the state of Washington.” *See* Dkt. #53 at 2. Given the legal authorities cited by the parties and
9 Plaintiff’s certification, the Court agrees that dismissal with prejudice would constitute a final
10 judgment in this case.
11

12
13 Next, Defendants argue that they will suffer legal prejudice if the Washington Supreme
14 Court is not permitted to decide the certified question because they expect to prevail. *See* Dkt.
15 #51 at 4. Additionally, Defendants opine a favorable decision by the Washington Supreme Court
16 would allow them to bring claims against the Trustee’s attorneys for filing the writ in Washington.
17 *Id.* at 4. Plaintiff responds that Defendants suffer no prejudice upon dismissal as their frozen funds
18 would be released to them. *See* Dkt. #52 at 4. Furthermore, they state that dismissal does not
19 preclude filing of claims against Trustee’s attorneys. *Id.* at 5.
20

21 First, absent a decision by the Washington Supreme Court, neither party is deemed to have
22 prevailed. Second, the Court agrees that upon dismissal, Defendants will have their funds
23 released. Finally, Defendants do not cite any legal authority for their assertions related to claims
24 against Plaintiff’s attorneys. Thus, Defendants have not met their burden to show they would
25 suffer prejudice as a result of dismissal.
26
27
28

1 Defendants also argue that Trustee's explanation for his motion for voluntary dismissal is
2 inadequate, particularly given the outstanding questions certified to the Washington Supreme
3 Court. *See* Dkt. #51 at 5. The parties both assert detailed factual background related to their prior
4 attempts to mediate this case, and expenses they would incur if they were to continue to litigate.
5 Defendants cite a number of cases, where courts have denied motions for voluntary dismissal, to
6 support their argument. However, as acknowledged by Defendants themselves, none of these
7 cases are exactly on point here. *Id.* at 6. Additionally, Plaintiff points out that all of those cases
8 were dismissed *without prejudice*, and many of which are *unreported*. *See* Dkt. #52 at 7-10.
9 Nonetheless, granting dismissal is within this Court's discretion. The Court finds Plaintiff's
10 reasons adequate and finds dismissal appropriate, especially given Plaintiff's certification that he
11 will not attempt to litigate the issue in another Washington court.
12

14 C. Recovery of Attorneys' Fees

15 Plaintiff states that Defendants may not recover attorneys' fees because Trustee is
16 dismissing the action with prejudice, and this was a business decision notwithstanding sound legal
17 arguments related. *See* Dkt. #48 at 4 (citing *Aerotech, Inc. v. Estes*, 110 F.3d 1523, 1528-29 (10th
18 Cir.1997) and *Stevedoring Services of America, Ltd v. Armilla 4 International, B. V.*, 889 F.2d
19 919, 921 (9th Cir. 1989)). Defendants argue that pursuant to RCW 6.27.230, they are entitled to
20 be awarded attorneys' fees as they would be the prevailing parties upon dismissal. *See* Dkt. #51
21 at 8-9 (citing *Park Place Motors, Ltd. v Elite Cornerstone Constr., LLC*, 18 Wn. App 2d 748,
22 757-58, 493 P3d 136, 142 (2021)). Plaintiff responds that these arguments are premature, and that
23 they will respond upon entry of an order of dismissal, and any subsequent claims brought by
24 Defendants for attorneys' fees. The Court has the discretion to condition dismissal upon payment
25 of costs and attorney's fees. *Westlands*, 100 F.3d at 97. The Court is not persuaded by Defendants'
26
27
28

1 arguments and does not currently see a basis for awarding attorneys' fees. However, the Court
2 will permit Defendants to submit a subsequent claim to seek attorneys' fees in a separate motion
3 to be filed no later than 30 days after entry of this order.

4 **D. CONCLUSION**

5 Having reviewed the relevant pleadings and the remainder of the record, the Court hereby
6 finds and ORDERS that:
7

- 8 1. Plaintiff's Motion to dismiss the garnishment proceeding with prejudice under Rule
9 41(a)(2), vacate the Order Freezing Accounts, and withdraw the Order Certifying
10 Issues to the Washington Supreme Court, Dkt. #48, is GRANTED.
11
12 2. The Clerk is DIRECTED to submit to the Washington Supreme Court certified copies
13 of this Order. The Clerk shall notify the parties as soon as possible, but no more than
14 three days, after the above described record is filed with the Washington Supreme
15 Court.
16
17 3. All pending motions are terminated. This matter is now CLOSED.

18
19 DATED this 29th day of November, 2022.
20
21

22 

23 RICARDO S. MARTINEZ
24 UNITED STATES DISTRICT JUDGE
25
26
27
28